

FORM 765

**Terms and Conditions
for Fixed-Price
Purchase Orders**

October 1988

Los Alamos

Los Alamos National Laboratory
Los Alamos, New Mexico 87545

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**STANDARD TERMS AND CONDITIONS
FOR FIXED-PRICE PURCHASE ORDERS**

Definitions

As used herein, the terms set forth below shall have the meanings stated.

- (a) "Government Contracting Officer" - A representative of the Government with the authority to enter into, administer, and/or terminate Government contracts and make related determinations and findings.
- (b) "Buyer" - The representative of the University of California authorized to execute and/or administer purchase orders and subcontracts on behalf of Los Alamos National Laboratory.
- (c) "DEAR" - The Department of Energy Acquisition Regulations.
- (d) "DOE" - The United States Department of Energy.
- (e) "FAR" - The Federal Acquisition Regulations.
- (f) "Goods" - All tangible property, except land or interest in land, and including tooling, equipment, materials, supplies, etc., used in connection with a purchase order.
- (g) "Government" - The government of the United States of America.
- (h) "Order" - A purchase order issued in accordance with the terms and conditions contained herein.
- (i) "Seller" - The party entering into the order with The Regents of the University of California.
- (j) "Subcontractor" - An individual or legal entity that has entered into an agreement with the Seller for the delivery of goods or services necessary for the Seller's performance of the purchase order.
- (k) "University" - The Regents of the University of California, a California corporation, who operate the Los Alamos National Laboratory under Prime Contract W-7405-Eng-36 with the Department of Energy.

Preamble

- (a) Pursuant to the terms of Contract W-7405-Eng-36, the University has agreed to appropriately treat requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions contained herein are similar to terms and conditions used by federal agencies. However, the University is not a federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of the University.
- (b) The Seller shall furnish the goods and/or services covered by the order subject to all the terms and conditions set forth in the order including the following, which the Seller, in accepting the order, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of goods or the performance of all or any portion of the services covered by the order shall constitute unqualified acceptance of all University terms and conditions. The terms of any quotation referred to in the order are included and made a part of the order only to the extent of specifying the nature of the goods or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the order.

"A" Articles Apply to Purchase Orders at All Dollar Levels

Article A1 - Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property

- (a) The Seller shall not furnish any item or component that is used or reconditioned material, residual inventory resulting from terminated Government contracts or subcontracts, or former Government surplus property unless such item or component was listed in the applicable attachment to the quotation and approved by the University or unless otherwise authorized in writing by the University.
- (b) All items or components furnished under the order shall comply with the terms and specifications contained in the order.

Article A2 - Delivery of Excess Quantities

The Seller is responsible for the delivery of each item quantity within allowable variations, if any. If the Seller delivers and the University receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Seller. The University may retain such excess quantities up to \$100 in value without compensating the Seller therefor, and the Seller waives all right, title, or interests therein.

Article A3 - Inspection

The goods or services furnished shall be exactly as specified in the order, free from all defects in Seller's design, workmanship, and materials, and, except as otherwise provided in the order, shall be subject to inspection and test by the University at all times and places. If, before final acceptance, any goods or services are found to be defective or not as specified, the University may reject them, require the Seller to correct them without charge, or require delivery of such goods or services at a reduction in price that is equitable under the circumstances. If the Seller is unable or refuses to correct such items within a time deemed reasonable by the University, the University may terminate the order in whole or in part. The Seller shall bear all risks for rejected goods and services and, in addition to any costs for which the Seller may become liable to the University under other provisions of the order, shall reimburse the University for all transportation costs, other related costs incurred, or payments to the Seller in accordance with the terms of the order for unaccepted goods and services. Notwithstanding final acceptance and payment, the Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to and do not limit the University's rights provided in this article.

Article A4 - Changes

- (a) The University may at any time by written change order and without notice to the sureties, if any, make changes within the general scope of the order in any one or more of the following:
 - (1) Drawings, designs, or specifications when the goods to be furnished are to be specifically manufactured for the University in accordance with the drawings, designs, or specifications.
 - (2) Method of shipping or packing.
 - (3) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of or the time required for performance of any part of the work under the order, whether or not changed by the change order, the University shall make an equitable adjustment in the order price, the delivery schedule, or both, and shall modify the order.
- (c) The Seller must submit any proposal for adjustment under this article within 30 days from the date of receipt of the written change order.
- (d) If the Seller's proposal for adjustment includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes article. However, nothing in this article shall excuse the Seller from proceeding with the order as changed.

Article A5 - Termination for Convenience

The University, by written notice, may terminate the order in whole or in part when it is in the University's interest. If the order is terminated, the rights, duties, and obligations of the parties, including compensation to the Seller, shall be in accordance with Part 49 of the FAR.

Article A6 - Stop-Work Order

- (a) The University may, at any time, by written stop-work order to the Seller, require the Seller to stop all or any part of the work called for by the order for a period of 90 days after the stop-work order is delivered to the Seller and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this article. Upon receipt of the stop-work order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Seller or within any extension of that period to which the parties shall have agreed, the University shall either
 - (1) Cancel the stop-work order or
 - (2) Terminate the work covered by the stop-work order as provided in the Default or the Termination for Convenience articles of the order.
- (b) If a stop-work order issued under this article is canceled or if the period of the stop-work order or any extension thereof expires, the Seller shall resume work. The University shall make an equitable adjustment in the delivery schedule or order price or both, and the order shall be modified, in writing, accordingly, if
 - (1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of the order; and
 - (2) The Seller asserts a claim for the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim asserted at any time before final payment under the order.

(c) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for default, the University shall allow, by equitable adjustment or other means, reasonable costs resulting from the stop-work order.

Article A7 - Title

Title to the goods and services purchased hereunder shall pass directly from the Seller to the Government at the f.o.b. point shown, subject to the right of the University to reject any goods or services upon inspection.

Article A8 - Payments

The Seller shall be paid for goods and services delivered and accepted or services rendered and accepted upon submission of acceptable invoices. The University will not pay cartage, shipping, packaging, or boxing expenses, unless specified in the order. Drafts will not be honored. Invoices must be accompanied by transportation receipts or facsimiles if transportation is payable and charged as a separate item.

Article A9 - Discounts for Prompt Payment

In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the goods to the carrier, if acceptance is at point of origin, or date of delivery at destination or port of embarkation, if delivery and acceptance are at either of these points, or (2) the date the proper invoice or voucher is received in the office specified by the University, if the latter is later than the date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the University check was dated or an electronic funds transfer payment was made.

Article A10 - Warranty

The Seller agrees that goods or services furnished under the order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar goods or services, and the Seller shall furnish copies of same to the University. The rights and remedies provided by such warranties are in addition to and do not limit any rights afforded to the University by any other article of the order.

Article A11 - Collect Shipments

(a) Goods purchased f.o.b. shipping point must be forwarded freight collect. The following notation must appear on the bills of lading or express receipt:

This shipment is for the account of the U.S. Government, which will assume the freight charges; it is subject to the terms and conditions set forth in the standard form of the U.S. Government's bill of lading and to any available special rates or charges.

(b) Government freight rates do not apply to prepaid shipments. Excess costs will be deducted from the amount invoiced for the goods if the goods are not shipped collect in accordance with these instructions.

Article A12 - Declared Valuation of Shipments

Except as otherwise provided on the face of the order, all shipments by the Seller under the order for the University's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification, and the bill of lading shall so note it.

Article A13 - Assignment of Claims

(a) The order or any right, remedy, or obligation hereunder is assignable in whole or in part by the University to the Government or its designee. Under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), the Seller may assign its rights to be paid amounts due or to become due because of the performance of the order to a bank, trust company, or other financial institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any bank, trust company, or other financial institution.

(b) Any assignment or reassignment authorized under the Act and this article shall cover all unpaid amounts payable under the order and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of the order.

(c) The Seller shall not furnish or disclose to any assignee under the order any classified document, including the order, or information related to work under the order until the University authorizes such action in writing.

Article A14 - Buy American Act

(a) The Buy American Act (41 U.S.C. 101) provides that the Government give preference to domestic end products.

(b) **Definitions.** "Components," as used in this article, means those goods incorporated directly into the end products.

"Domestic end products," as used in this article, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraph (b)(2) or (b)(3) of this article shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this article, means those goods to be acquired for public use under the order.

(c) The Seller shall deliver only domestic end products, except those

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the applicable Federal agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the applicable Federal agency determines the cost to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the FAR.)

Article A15 - Pricing of Adjustments

When costs are a factor in any determination of a price adjustment pursuant to the Changes article or any other provision of the order, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the FAR.

Article A16 - Disputes

(a) Except as otherwise provided for in the order, all disputes arising under or relating to the order shall be resolved in accordance with this article.

(b) "Claim," as used in this article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of order terms, or other relief arising under or relating to the order.

(c) Unless otherwise provided for in the order, a claim by the Seller must be filed within 30 calendar days after the Seller knows or should have known of the facts giving rise thereto.

(d) Any claim by the Seller shall first be presented to the Buyer, who shall attempt to resolve the matter in a reasonable amount of time. If the claim is not resolved by the Buyer in a manner satisfactory to the Seller, and the Seller desires to pursue further action, the claim must be presented in writing to the Materials Management Division Leader for a written decision.

(e) The Materials Management Division Leader shall investigate the issues involved in the claim and promptly issue a decision in writing. A copy of that decision shall be mailed to the Seller and shall state the reasons for the decision.

(f) The decision by the Materials Management Division Leader may be reviewed exclusively through the process stated in subsequent paragraphs of this article.

(g) A claim by the University against the Seller, or a decision by the Materials Management Division Leader regarding a claim by the Seller, may be submitted to the DOE Contracting Officer for review and a written decision. Any such submittal by the Seller shall be made within 30 calendar days after the Seller receives the Materials Management Division Leader's decision.

(h) The decision of the DOE Contracting Officer shall be issued in a reasonable amount of time and shall be final unless one of the parties appeals the decision within 30 days from the receipt of the decision to the DOE Board of Contract Appeals. The decision of the Board shall be final and conclusive.

(i) Pending final resolution of any claim, request for relief, appeal, or action arising under or relating to the order, the Seller shall proceed diligently with performance of the order and in accordance with any direction of the Buyer.

(j) In connection with any proceeding at the Laboratory under this article, the Seller shall be afforded an opportunity to be heard and to offer evidence in support of its position. Any proceeding before the DOE shall be in accordance with its rules of procedure.

Article A17 - Work on University or Government Premises

To the extent that the Seller's work under the order involves performance by the Seller at University or Government-owned sites or facilities, the following provisions shall apply:

- (a) **Indemnify and Hold Harmless.** The Seller shall indemnify and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Seller or its subcontractors under the order.
- (b) **Liens.** The Seller agrees that, at any time upon the request of the University, it will submit a sworn statement setting forth the services performed or goods furnished by subcontractors and the amount due and to become due to each, and that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

The Seller shall:

- (1) Indemnify and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Seller or its subcontractors under the order, and from all laborers', materialmen's, and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government; and shall
- (2) Promptly notify the University, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Seller shall forward with such notification copies of all pertinent papers received by the Seller with respect to any such claims, demands, causes of action or suits, or liens and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Seller's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means.

The final payment shall not be made until the Seller, if required, shall deliver to the University a complete release of all liens arising out of the order or receipts in full in lieu thereof, as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed, but the Seller may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Seller shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

- (c) **Cleaning Up.** The Seller shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its subcontractors; and, at the completion of the work, it shall remove all rubbish from and about the buildings and all of its and its subcontractors' tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Seller and its subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or, in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Seller.
- (d) **Employees.** The Seller shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the order. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Seller, the Seller shall remove such person from the work under the order, and that person shall not again, without written permission of the University, be assigned to work under the order.
- (e) **Insurance.** The Seller shall maintain with reputable companies insurance in amounts required under the order sufficient to protect the University and the Government from any and all public liability and Workmen's Compensation claims at all times during the performance of the order. If requested, the Seller shall supply the University with one copy of certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of subcontractors' compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Seller shall maintain additional insurance to the extent consistent with sound business practice.
- (f) **Safety and Health.** The Seller shall take all reasonable precautions in the performance of the work under the order to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of the University and the DOE. The University shall notify the Seller in writing of any noncompliance with the provisions of this article and the corrective action to be taken. After receipt of such notice, the Seller shall immediately take corrective action. This corrective action shall include, at a minimum, that the Seller submit a management program and implementation plan to the University for review and approval within 30 days after the date of award of the order. If the Seller fails to comply with said regulations or requirements of the University and the DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work, thereafter a start order for resumption of the work may be issued at the discretion of the University. The Seller shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

Article A18 - Permits

The Seller agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the Government and of the state, territory, and political subdivision in which the work under the order is performed.

Article A19 - Equal Opportunity

- (a) If, during any 12 month period (including the 12 months preceding the award of the order), the Seller has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Seller shall comply with subparagraphs (b)(1) through (b)(11) below. Upon request, the Seller shall provide information necessary to determine the applicability of this article:
- (b) While performing the order, the Seller agrees as follows:
- (1) The Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (2) The Seller shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This affirmative action shall include but not be limited to (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (3) The Seller shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the University that explain this article.
- (4) The Seller shall, in all solicitations or advertisement for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Seller shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the University advising the labor union or workers' representative of the Seller's commitments under this article and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Seller shall furnish to the Government all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor, Standard Form 100 (EOC-1) or any succeeding form is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- (8) The Seller shall permit access to its books, records, and accounts by the University, the DOE, or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Seller's compliance with the applicable rules, regulations, and orders.
- (9) If the OFCCP determines that the Seller is not in compliance with this article or any rule, regulation, or order of the Secretary of Labor, the order may be canceled, terminated, or suspended in whole or in part, and the Seller may be declared ineligible for further Government contracts and subcontracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Seller as provided in Executive Order 11246, as amended; the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
- (10) The Seller shall include the terms and conditions of subparagraphs (b)(1) through (b)(11) of this article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor.
- (11) The Seller shall take such action with respect to any subcontract as the University may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided that if the Seller becomes involved in or is threatened with litigation with a subcontractor as a result of any direction, the Seller may request the Government to enter into the litigation to protect the interests of the Government and the University.
- (c) Notwithstanding any other article in the order, disputes relative to this article will be governed by the procedures in 41 CFR 60-1.1.

Article A20 - Officials Not to Benefit

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of the order or to any benefit arising from it. However, this article does not apply to the order to the extent that the order is made with a corporation for the corporation's general benefit.

Article A21 - Notice of Labor Disputes

- (a) If the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the order, the Seller shall immediately give notice, including all relevant information, to the University.
- (b) The Seller agrees to insert the substance of this article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of the order; except that each subcontract shall provide that if its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or the Seller, as the case may be, of all relevant information concerning the dispute.

Article A22 - Property

(a) *University-furnished Government Property.*

- (1) The University shall deliver to the Seller for use in connection with and under the terms of the order the property described in the order or specifications together with any related data and information that the Seller may request and that are reasonably required for the intended use of the property (hereinafter referred to as "University-furnished property").
- (2) The delivery or performance dates for the order are based upon the expectation that University-furnished property suitable for use (except for property furnished "as is") will be delivered to the Seller at the times stated in the order or, if not so stated, in sufficient time to enable the Seller to meet the order's delivery or performance dates.
- (3) If University-furnished property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt of it, notify the University, detailing the facts, and, as directed by the University and at University expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Seller, the University shall make an equitable adjustment as provided in paragraph (h) of this article.
- (4) If University-furnished property is not delivered to the Seller by the required time, the University shall, upon the Seller's timely written request, make a determination of the delay, if any, caused the Seller and shall make an equitable adjustment in accordance with paragraph (h) of this article.

(b) *Changes in University-furnished Property.*

- (1) The University may by written notice
- (i) Decrease the University-furnished property provided or to be provided under the order or
- (ii) Substitute other University-furnished property for the property to be provided by the University or to be acquired by the Seller for the University under the order. The Seller shall promptly take such action as the University may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Seller's written request, the University shall make an equitable adjustment to the order in accordance with paragraph (h) of this article, if the Government and the University have agreed in the order to make the property available for performing the order and there is any
- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other order or lease.

(c) *Title in University-furnished Property.*

- (1) The Government shall retain title to all University-furnished property.
- (2) All University-furnished property and all property acquired by the Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the University or the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling article) acquired by the Seller for the University under the order shall pass to and vest in the Government when its use in performing the order commences or when the University or the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If the order contains a provision directing the Seller to purchase goods for which the University or the Government will reimburse the Seller as a direct item of cost under the order,
- (i) Title to goods purchased from a subcontractor shall pass to and vest in the Government upon the subcontractor's delivery of such goods; and

- (ii) Title to all other goods shall pass to and vest in the Government upon

- (A) Issuance of the goods for use in order performance;
- (B) Commencement of processing of the goods or its use in order performance; or
- (C) Reimbursement of the cost of the goods by the University or the Government, whichever occurs first.

- (d) *Use of University-furnished Property.* Government property shall be used only for performing the order, unless otherwise provided in the order or approved by the University.

(e) *Property Administration.*

- (1) The Seller shall be responsible and accountable for all University-furnished property provided under the order and shall comply with FAR Subpart 45.5 and DEAR Subpart 945.5.
- (2) The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of University-furnished property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR and DEAR Subpart 945.5.
- (3) If damage occurs to University-furnished property, the risk of which has been assumed by the University or the Government under the order, the University shall replace the items or the Seller shall make such repairs as the University directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by the University. When any property for which the University is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this article.
- (4) The Seller represents that the order price does not include any amount for repairs or replacement for which the University is responsible. Repair or replacement of property for which the Seller is responsible shall be accomplished by the Seller at its own expense.

- (f) *Access.* The Government and the University and all their designees shall have access at all reasonable times to the premises on which any University-furnished property is located for the purpose of inspecting the University-furnished property.

- (g) *Risk of Loss.* Unless otherwise provided in the order, the Seller assumes the risk of and shall be responsible for any loss or destruction of or damage to University-furnished property upon its delivery to the Seller or upon passage of title to the Government under paragraph (c) of this article. However, the Seller is not responsible for reasonable wear and tear to University-furnished property or for University property properly consumed in performing the order.

- (h) *Equitable Adjustment.* When this article specifies an equitable adjustment, it shall be made to any affected order provision in accordance with the procedures of the Changes article. When appropriate, the University may initiate an equitable adjustment in favor of the University or the Government. The right to an equitable adjustment shall be the Seller's exclusive remedy. Neither the Government nor the University shall be liable to suit for breach of contract for

- (1) Any delay in delivery of University-furnished property;
- (2) Delivery of University-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of University-furnished property; or
- (4) Failure to repair or replace property for which the University is responsible.

- (i) *Final Accounting and Disposition of University-furnished Property.* Upon completing the order or at such earlier dates as may be fixed by the University, the Seller shall submit, in a form acceptable to the University, inventory schedules covering all items of University-furnished property (including any resulting scrap) not consumed in performing the order or delivered to the University. The Seller shall prepare for shipment, deliver f.o.b. origin, or dispose of the University property as may be directed or authorized by the University. The net proceeds of any such disposal shall be credited to the order price or shall be paid to the Government or the University as the University directs.

- (j) *Abandonment and Restoration of Seller's Premises.* Unless otherwise provided herein, the University and the Government

- (1) May abandon any University-furnished property in place, at which time all obligations of the Government or the University regarding such abandoned property shall cease; and
- (2) Have no obligation to restore or rehabilitate the Seller's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon order completion). However, if the University-furnished property (listed in the order or specifications) is withdrawn or is unsuitable for the intended use, or if other University-furnished property is substituted, then the equitable adjustment under paragraph (h) of this article may properly include restoration or rehabilitation costs.

- (k) *Communications.* All communications under this article shall be in writing.

- (l) *Overseas Orders.* If the order is to be performed outside of the United States of America, its territories, or possessions, the word "Government" (wherever it appears in this article) shall be construed as "United States Government."

Article A23 - Covenant Against Contingent Fees

(a) The Seller warrants that no person or agency has been employed or retained to solicit or obtain the order upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the University shall have the right to annul the order without liability or, in its discretion, to deduct from the order price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) **Definitions.** "Bona fide agency," as used in this article, means an established commercial or selling agency, maintained by a Seller for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government or University contracts or subcontracts nor holds itself out as being able to obtain any Government or University contract(s) or subcontract(s) through improper influence.

"Bona fide employee," as used in this article, means a person employed by a seller and subject to the seller's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government or University contracts or subcontracts nor holds itself out as being able to obtain any Government or University contract(s) or subcontract(s) through improper influence.

"Contingent fee," as used in this article, means any commission, percentage fee, brokerage fee, or other fee that is contingent upon the success that a person or concern has in securing a Government or University contract or subcontract.

"Improper influence," as used in this article, means any influence that induces or tends to induce a Government or University employee or officer to give consideration or to act regarding a Government or University contract or subcontract on any basis other than the merits of the matter.

Article A24 - Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

(a) **Policy.** It is the policy of the University and the Government that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts and subcontracts, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the University and the Government that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged persons.

(b) The Seller hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient order performance. The Seller further agrees to cooperate in any studies or surveys that may be conducted by the United States Small Business Administration, the DOE, or the University that may be necessary to determine the extent of the Seller's compliance with this article.

(c) As used in the order, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern

(1) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

The Seller shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Sellers acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

Article A25 - Utilization of Women-Owned Small Businesses

(a) **Policy.** It is the policy of the University and the Government that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts and subcontracts

(b) The Seller agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its order.

(c) **Definitions.** "Women-owned small businesses," as used in this article, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this article, means exercising the power to make policy decisions.

"Operate" as used in this article, means being actively involved in the day-to-day management of the business.

Article A26 - Utilization of Labor Surplus Area Concerns

(a) **Policy.** It is the policy of the University and the Government to award orders and subcontracts to concerns that agree to perform substantially in labor surplus areas (LSAs) when this can be done consistent with the efficient performance of the order and at prices no higher than are obtainable elsewhere. The Seller agrees to use its best efforts to place subcontracts in accordance with this policy.

(b) **Order of Preference.** In complying with paragraph (a) above and with paragraph (a) of the article entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Seller shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(c) **Definitions.** "Labor surplus area," as used in this article, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this article, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the order on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the order price.

Article A27 - Priorities, Allocations, and Allotments

The Seller shall follow the provisions of the Defense Priorities and Allocation System Regulation (15 CFR 350).

Article A28 - Federal, State, and Local Taxes

(a) Except as may be otherwise provided in the order, the price includes all applicable Federal, state, and local taxes and duties.

(b) The Seller may be reimbursed for gross receipts taxes imposed by the New Mexico Gross Receipts and Compensating Tax Act (the Act) upon the order, subject to the provisions set forth in this article. To be reimbursed, the Seller must submit an invoice for the order, which must be for "services," "lease or rental of tangible personal property," or "construction" as those terms are defined in the Act. The invoice(s) for the order must separately state the amount of gross receipts tax to be reimbursed. Failure to invoice for gross receipts tax in accordance with this article at the time established for invoicing for the price of the order shall be deemed a waiver by the Seller of such reimbursement.

(c) The University is authorized to issue nontaxable transaction certificates (NTTCs) to enable the Seller to exclude from gross receipts the price of an order for the "purchase" of "tangible personal property" as those terms are defined in the Act. If the order is for the purchase of tangible personal property, the University reserves the right to issue an NTTC instead of reimbursing gross receipts taxes otherwise imposed on the price of the order. Further, the Seller agrees to refund any gross receipts taxes reimbursed by the University under the order if funds provided for the order are used for the purchase of tangible personal property.

(d) **Improper Use of a University-Issued NTTC.** If the Seller uses a University-issued NTTC for a purpose not authorized under the Act (e.g., to exclude the price of an order for "services," "lease or rental of tangible personal property," or "construction" as those terms are defined in the Act, whether received under the order or any other order with the University), such improper use shall be deemed a waiver by the Seller of reimbursement for gross receipts taxes for any order affected by such improper use.

Article A29 - Authorization and Consent

(a) The Government authorizes and consents to all use and manufacture, in performing the order or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article, the delivery of which is accepted by the University for the Government under the order, or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Seller or a subcontractor with (i) specifications or written provisions forming a part of the order or (ii) specific written instructions given by the University directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the Patent Indemnity article included in the order or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Seller agrees to include and require inclusion of this article, suitably modified to identify the parties, in all subcontracts at any tier for goods or services (including construction, architect-engineer services, goods, models, samples, and design or testing services) expected to exceed \$25,000; however, omission of this article from any subcontract under or over \$25,000 does not affect this authorization and consent.

Article A30 - Security

- (a) **Responsibility.** The Seller has the duty to safeguard all classified information, special nuclear material, and other Government property. The Seller shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and for protecting against sabotage, espionage, loss, and theft of the classified documents and material in the Seller's possession in connection with the performance of work under the order. Except as otherwise expressly provided in the order, the Seller shall, upon completion or termination of the order, transmit to the University any classified matter in the possession of the Seller or any person under the Seller's control in connection with performance of the order. If retention by the Seller of any classified matter is required after the completion or termination of the order and such retention is approved by the University, the Seller will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the University, the security provisions of the order will continue to apply to the matter retained. Special nuclear material will not be retained after the completion or termination of the order.
- (b) **Regulations.** The Seller agrees to conform to all security regulations and requirements of the DOE.
- (c) **Definition of Classified Information.** The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) **Definition of Restricted Data.** The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) **Definition of Formerly Restricted Data.** The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) **Definition of National Security Information.** The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by or produced for or by or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and that is so designated.
- (g) **Definition of Special Nuclear Material (SNM).** SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) **Security Clearance of Personnel.** The Seller shall not permit any person to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) **Criminal Liability.** It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it or failure to safeguard any classified information that may come to the Seller or any person under the Seller's control in connection with work under the order may subject the Seller, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2100 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)
- (j) **Subcontracts and Purchase Orders.** Except as otherwise authorized in writing by the University, the Seller shall insert provisions similar to the foregoing in all subcontracts under the order.

Article A31 - Printing

- (a) The Seller shall not engage in nor subcontract for any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations) in the performance of work under the order, provided, however, that performance of a requirement under the order involving the duplication of less than 5000 copies of a single unit or no more than 25,000 units in the aggregate of multiple units will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches on one side only and in one color. A requirement is defined as a single publication document.
- (b) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the goods produced by such processes.
- (c) If fulfillment of the order will necessitate reproduction exceeding the limits set forth above, the Seller shall notify the University in writing and shall obtain the University's approval before acquiring production, acquisition, and dissemination of printed matter on the University's behalf.
- (d) The cost of printing services not obtained in compliance with this article will be disallowed.
- (e) The Seller will include in each of its subcontracts hereunder a provision substantially the same as this article, including this paragraph (e).

Article A32 - Antikickback Procedures

- (a) **Definitions.** "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to the University, a University employee, a seller or subcontractor, or the employee of a seller or subcontractor for the purpose of improperly obtaining or rewarding favorable treatment in connection with a purchase order or subcontract at any tier relating to the prime contract.
- "Person" means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- "Prime contract" means Contract W-7405-Eng-36 between the United States Department of Energy (DOE) and The University of California, Los Alamos National Laboratory (University) for the purpose of obtaining supplies, materials, equipment, or services.
- "University employee" means any officer, employee, or agent of the University.
- "Order" means a purchase order, contract, or contractual action entered into by the University or a seller for the purpose of obtaining supplies, materials, equipment, or services of any kind under the prime contract.
- "Seller" (1) means any person, other than the University, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under the prime contract or under an order entered into in connection with the prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the University or a seller under a subcontract at any tier.
- "Seller employee" means any officer, partner, employee, or agent of a seller.
- (b) The Anti-Kickback Act of 1986 (41 USC 51-58) (the Act) prohibits any person from
- (1) Providing, attempting to provide, or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the order price charged by a subcontractor to the University or seller.
- (c) (1) The Seller will have in place and follow reasonable procedures designed to prevent and detect possible violations of the Act in its own operations and in its direct business relationships in connection with the prime contract.
- (2) When the Seller has reasonable grounds to believe that a violation of the Act may have occurred, the Seller shall promptly report in writing the possible violation. Such reports shall be made to the Materials Management Division Leader, the Controller, or the Laboratory Counsel of the University.
 - (3) The Seller shall cooperate fully with any investigation of a possible violation of the Act.
 - (4) Regardless of the order or subcontract tier at which a kickback was provided, accepted, or charged in connection with the prime contract in violation of the Act, the University may
 - (i) Offset the amount of the kickback against any monies owed by the University under the order, and/or
 - (ii) Direct the Seller to withhold from sums owed to a subcontractor, the amount of the kickback. The University may direct that the monies withheld be paid to DOE or, if DOE has offset the monies under the prime contract, be paid to the University.
 - (iii) Nothing in this clause precludes any contractual or common law remedy available to the University.
 - (5) The Seller agrees to incorporate the substance of this clause, including this subparagraph (c) (5), in all subcontracts under the order.

The following articles are incorporated into Section A by reference with the same force and effect as if they were included in full text. In general, where these articles refer to "Government" and "Contracting Officer," the word "University" should be substituted.

FAR 52.203-3 Gratuities

FAR 52.222-3 Convict Labor

"B" Articles Also Apply to Purchase Orders over \$2500

Article B1 - Affirmative Action for Handicapped Workers

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against any employee or applicant because of physical or mental handicap. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped persons without discrimination based upon their physical or mental handicap in all employment practices such as (i) employment; (ii) upgrading; (iii) demotion or transfer; (iv) recruitment; (v) advertising; (vi) layoff or termination; (vii) rates of pay or other forms of compensation; and (viii) selection for training, including apprenticeship.
- (2) The Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Seller agrees to post employment notices stating (i) the Seller's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped persons and (ii) the rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. Notices shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the University.
 - (3) The Seller shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Seller is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ and advance in employment qualified physically and mentally handicapped persons.
- (c) **Noncompliance.** If the Seller does not comply with the requirements of this article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) **Subcontracts.** The Seller shall include the terms of this article in every subcontract exceeding \$2500 unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by the Director to enforce the terms, including action for noncompliance.

The following article is incorporated into Section B by reference with the same force and effect as if it were included in full text. In general, where the article refers to "Government" and "Contracting Officer," the word "University" should be substituted.

FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation

"C" Articles Also Apply to Purchase Orders Over \$10,000

Article C1 - Examination of Records by Comptroller General

- (a) This article applies if the order exceeds \$10,000 and was entered into by negotiation.
- (b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until three years after final payment under the order or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Seller's directly pertinent books, documents, papers, or other records involving transactions related to the order.
- (c) The Seller agrees to include in first-tier subcontracts under the order an article to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until three years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this article, excludes (1) subcontracts not exceeding \$25,000 and (2) subcontracts for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes article, (2) litigation or settlement of claims arising from the performance of the order, or (3) costs and expenses of the order to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

Article C2 - Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

- (a) The Seller shall report at least annually, as required by the Secretary of Labor (hereinafter referred to as "Secretary"), on:
 - (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Seller by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report and, of that total, the number of special disabled veterans and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than March 31 of each year.
- (d) The employment activity report required by paragraph (a)(2) of this article shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this article. Sellers may select an ending date (1) as of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31st if the Seller has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this article shall be based on voluntary disclosure. Each Seller subject to the reporting requirements of 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Seller. The invitation shall state that (1) the information is voluntarily provided, (2) the information will be kept confidential, (3) disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and (4) the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.
- (f) **Subcontracts.** The Seller shall include the terms of this article in every subcontract of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

The following articles are incorporated into Section C by reference with the same force and effect as if they were included in full text. In general, where these articles refer to "Government" and "Contracting Officer," the word "University" should be substituted.

FAR 52.222-20 Walsh-Healey Public Contracts Act

FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans

"D" Articles Also Apply to Purchase Orders Over \$25,000

Article D1 - Notice and Assistance Regarding Patent and Copyright Infringement

- (a) The Seller shall report to the Government, through the University, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement, based on the performance of the order, of which the Seller has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of the order or out of the use of any goods furnished or work or services performed under the order, the Seller shall furnish to the Government, through the University, when requested by the University, all evidence and information in possession of the Seller pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except when the Seller has agreed to indemnify the Government.
- (c) The Seller agrees to include and require inclusion of this article in all subcontracts at any tier for goods or services (including construction and architect-engineer subcontracts and those subcontracts for goods, models, samples, or design or testing services) expected to exceed \$25,000.

Article D2 - Patent Indemnity

- (a) The Seller shall indemnify the University and the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of goods, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under the order, or out of the use or disposal by or for the account of the Government of such goods or construction work.
- (b) This indemnity shall not apply unless the Seller shall have been informed as soon as practicable by the University or the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the University directing a change in the goods to be delivered or to be used, or directing a manner of performance of the order not normally used by the Seller; (2) an infringement resulting from addition to or change in goods furnished or construction work performed that was made after delivery or performance; or (3) a claimed infringement that is unreasonably settled without the consent of the Seller, unless required by final decree of a court of competent jurisdiction.

Article D3 - Royalty Information

- (a) **Cost or Charges for Royalties.** When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the quotation relating to each separate item of royalty or license fee:
 - (1) Name and address of licensor.
 - (2) Date of license agreement.
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.
 - (4) Brief description, including any part or model numbers of each order item or component on which the royalty is payable.
 - (5) Percentage or dollar rate of royalty per unit.
 - (6) Unit price of the order item.
 - (7) Number of units.
 - (8) Total dollar amount of royalties.
- (b) **Copies of Current Licenses.** In addition, if specifically requested by the University before execution of the order, the Seller shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

Article D4 - Preference for U.S.-Flag Air Carriers

- (a) "International air transportation," as used in this article, means transportation by air between a place in the United States and a place outside the United States or between two places, both of which are outside the United States.

"United States," as used in this article, means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this article, means an air carrier holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).
- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government and

University sellers and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- (c) The Seller agrees, in performing work under the order, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- (d) If the Seller selects a carrier other than a U.S.-flag air carrier for international air transportation, the Seller shall include a certification on vouchers involving such transportation essentially as follows:

**Certification of Unavailability of
U.S.-Flag Air Carriers**

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available, or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the FAR). State reasons:....
(End of certification)

- (e) The Seller shall include the substance of this article, including this paragraph (e), in each subcontract under the order that may involve international air transportation.

Article D5 - Default

- (a) (1) The University may, subject to paragraphs (c) and (d) below, by written notice of default to the Seller, terminate the order in whole or in part if the Seller fails to
 - (i) Deliver the goods or perform the services within the time specified in the order or any extension thereof;
 - (ii) Make progress, so as to endanger performance of the order (but see subparagraph [a] 2] below); or
 - (iii) Perform any of the other provisions of the order (but see subparagraph [a] 2] below).
- (2) The University's right to terminate the order under subparagraphs (1)(i) and (1)(iii), above, may be exercised if the Seller does not cure such failure within ten days (or more if authorized in writing by the University) after receipt of the notice from the University specifying the failure.
- (b) If the University terminates the order in whole or in part, it may acquire, under the terms and in the manner the University considers appropriate, goods or services similar to those terminated, and the Seller will be liable to the University for any excess costs for those goods or services. However, the Seller shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform the order arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Seller.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier and if the cause of the default is beyond the control of both the Seller and subcontractor and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.
- (e) If the order is terminated for default, the University may require the Seller to transfer title to the Government and deliver to the University, as directed by the University, any (1) completed goods and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing goods" in this article) that the Seller has specifically produced or acquired for the terminated portion of the order. Upon direction of the University, the Seller shall also protect and preserve property in its possession and in which the University has an interest.
- (f) The University shall pay the order price for completed goods delivered and accepted. The Seller and the University shall agree on the amount of payment for manufacturing goods delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes article. The University may withhold any sum from these amounts that the University determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Seller was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the University.
- (h) The rights and remedies of the University and the Government in this article are in addition to any other rights and remedies provided by law or under the order.

Article D6 - Audit-Negotiation

- (a) **Examination of Costs.** If the order is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable order or any combination of these, the Seller shall maintain—and the University or representatives of the University, including employees of the Government, shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs claimed to be incurred or anticipated to be incurred in performing the order. This right of examination shall include inspection at all reasonable times of the Seller's facilities or parts of them engaged in performing the order.
- (b) **Cost or Pricing Data.** If, pursuant to law, the Seller has been required to submit cost or pricing data in connection with pricing the order or any modification to the order, the University or representatives of the University, including employees of the Government, shall have the right to examine and audit all books, records, documents, and other data of the Seller (including computations and projections) related to negotiating, pricing, or performing the order or modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.
- (c) **Reports.** If the Seller is required to furnish cost, funding, or performance reports, the University or representatives of the University, including employees of the Government, shall have the right to examine and audit books, records, other documents, and supporting materials for the purpose of evaluating (1) the effectiveness of the Seller's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- (d) **Availability.** The Seller shall make available at its office(s) at all reasonable times the materials described in paragraphs (a) and (b) above for examination, audit, or reproduction until three years after final payment under the order or for any shorter period specified in Subpart 4.7 of the FAR, Contractor Records Retention, or for any longer period required by statute or by other articles of the order. In addition:
- (1) If the order is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes article or to litigation or the settlement of claims arising under or relating to the order shall be made available until such appeals, litigation, or claims are disposed of.
- (e) The Seller shall insert an article containing all the terms of this article, including this paragraph (e), in all subcontracts over \$10,000 under the order and alter the article only as necessary to identify properly the contracting parties and the University under the Government prime contract.

"E" Articles Also Apply to Purchase Orders Over \$100,000

Article E1 - Termination for Convenience (For Orders Exceeding \$100,000)

(a) Article A5, Termination for Convenience, shall not apply for orders subject to this Article E1.

(b) The University may terminate performance of work under the order in whole or, from time to time, in part if the University determines that a termination is in the University's or the Government's interest. The University shall terminate by delivering to the Seller a Notice of Termination specifying the extent of termination and the effective date.

(c) After receipt of a Notice of Termination, and except as directed by the University, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this article:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts for goods, services, or facilities, except as necessary to complete the continued portion of the order.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the University, all right, title, and interest of the Seller under the subcontracts terminated, in which case the University or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this article.
- (6) As directed by the University, transfer title to the Government and deliver to the University (i) the fabricated or unfabricated parts, work in process, completed work, and goods produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the order had been completed, would be required to be furnished to the University.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the University may direct, for the protection and preservation of the property related to the order that is in the possession of the Seller and in which the University or the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in subparagraph (c)(6) above, provided, however, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the order, credited to the price or cost of the work, or paid in any other manner directed by the University.

(d) After expiration of the "plant clearance period" (see Subpart 45.6 of the FAR), the Seller may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Seller may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 90 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Seller shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Seller shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University, upon written request of the Seller within this one-year period. However, if the University determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Seller fails to submit the proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Seller and the University may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) below, exclusive of costs shown in subparagraph (g)(3) below, may not exceed the total order price as reduced by (1) the amount of payments previously made and (2) the order price of work not terminated. The order shall be amended and the Seller paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Seller and the University fail to agree on the whole amount to be paid because of the termination of work, the University shall pay the Seller the amounts determined by the University as follows, but without duplication of any amounts agreed on under paragraph (f) above:

- (1) The order price for completed goods or services accepted by the University (or sold or acquired under subparagraph (c)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of

- (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to goods or services paid or to be paid under subparagraph (g)(1) above;
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the order if not included in subdivision (2)(i) above; and
- (iii) A sum, as profit on subdivision (2)(i) above, determined by the University under 49.202 of the FAR, to be fair and reasonable; however, if it appears that the Seller would have sustained a loss in the entire order had it been completed, the University shall allow no profit under this subdivision (g)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the University or the Government expressly assumed the risk of loss, the University shall exclude from the amounts payable to the Seller under paragraph (g) above, the fair value, as determined by the University, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a buyer.

(i) The cost principles and procedures of Part 31 of the FAR shall govern all costs claimed, agreed to, or determined under this article.

(j) The Seller shall have the right of appeal, under the Disputes article, from any determination made by the University under paragraph (e), (g), or (h), except that if the Seller failed to submit the termination settlement proposal within the time provided in paragraph (e) or (f) and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g), or (h), the University shall pay the Seller (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken or (2) the amount finally determined on an appeal.

(k) In arriving at the amount due the Seller under this article, there shall be deducted

- (1) All unliquidated advanced or other payments to the Seller under the terminated portion of the order.
- (2) Any claim that the University has against the Seller under the order; and
- (3) The agreed price for or the proceeds of sale of goods acquired by the Seller or sold under the provisions of this article and not recovered by or credited to the University.

(l) If the termination is partial, the Seller may file a proposal with the University for an equitable adjustment of the proceeds of the continued portion of the order. The University shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this article shall be requested within 90 days from the effective date of termination unless extended in writing by the University.

(m) (1) The University may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the order if the University believes the total of these payments will not exceed the amount to which the Seller will be entitled.

- (2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215 (b)(7). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.

(n) Unless otherwise provided in the order or by statute, the Seller shall maintain all records and documents relating to the terminated portion of the order for three years after final settlement. This includes all books and other evidence bearing on the Seller's costs and expenses under the order. The Seller shall make these records and documents available to the University or the Government at the Seller's office, at all reasonable times, without any direct charge. If approved by the University, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

The following FAR clause is incorporated into Section E by reference with the same force and effect as if it were included in full text. In general, where this clause refers to "Government" and "Contracting Officer," the word "University" should be substituted.

FAR 52.223-2 Clean Air and Water

"F" Articles Do Not Apply Unless Specifically Referred To in the Request for Quotation and Purchase Order.

Article F1 - Extended Warranty

Notwithstanding any other provisions of the order, the Seller warrants that the goods or services furnished shall be of the most suitable grade and exactly as specified in the order. Such warranty shall include the following: performance, workmanship, labor, materials, and the Seller's design or engineering contributions. If a defect is discovered in any goods or services covered in the order, the Seller shall correct at its expense such defects as are reported within one year of final acceptance or such longer period as the Seller may offer in its most favorable applicable warranty. Upon expiration of the applicable warranty period, all such liability shall terminate except for fraud or such gross mistakes as amount to fraud, latent defects, or specific failure to comply with the terms of the order. This warranty is in addition to the Warranty article in Section A.

Article F2 - Notice of Total Small Business Set-Aside

(a) **Definition.** "Small business concern," as used in this article, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the size standards established by the U.S. Small Business Administration.

(b) **General.**

(1) Quotations are solicited only from small business concerns. Quotations received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) **Agreement.** A manufacturer or regular dealer submitting a quotation in its own name agrees to furnish, in performing the order, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service orders.

Article F3 - Limitation on Subcontracting

By submission of an offer and execution of an order, the Seller agrees that in performance of the order in the case of an order for:

(a) Services (except construction), at least 50 percent of the cost of order performance incurred for personnel shall be expended for employees of the concern.

(b) Goods (other than procurement from a regular dealer in such goods), the concern shall perform work for at least 50 percent of the cost of manufacturing the goods, not including the cost of materials.

Article F4 - Subcontractor Cost or Pricing Data

(a) Before awarding any subcontract expected to exceed \$100,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Seller shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is:

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) The Seller shall require the subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds \$100,000 when entered into, the Seller shall insert either:

(1) The substance of this article, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the subcontract; or

(2) The substance of the Subcontractor Cost or Pricing Data - Modifications article.

Article F5 - Cost Accounting Standards

(a) Unless the order is exempt under FAR 30.201-1 and 30.201-2, the provisions of FAR Subpart 30.3 are incorporated herein by reference and the Seller, in connection with the order, shall:

(1) By submission of a Disclosure Statement, disclose in writing the Seller's cost accounting practices as required by FAR 30.202-1 through 30.202-5. The practices disclosed for the order shall be the same as the practices currently disclosed and applied on all other orders and subcontracts being performed by the Seller and that contain a Cost Accounting Standards (CAS) article. If the Seller has notified the University or the Government Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the University or the Government.

(2) Follow consistently the Seller's cost accounting practices in accumulating and reporting performance cost data concerning the order. If any change in cost accounting practices is made for the purposes of any order or subcontract subject to CAS requirements, the change must be applied prospectively to the order, and the Disclosure Statement must be amended accordingly. If the order price or cost allowance of the order is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in FAR Subpart 30.4, in effect on the date of award of the order, or, if the Seller has submitted cost or pricing data, on the date of final agreement on price as shown on the Seller's signed Certificate of Current Cost or Pricing Data. The Seller shall also comply with any CAS (or modifications to CAS) that hereafter become applicable to an order or subcontract of the Seller. Such compliance shall be required prospectively from the date of applicability to such order or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes article of the order if the order cost is affected by a change that, pursuant to subparagraph (a)(3) above, the Seller is required to make to the Seller's established cost accounting practices.

(ii) Negotiate with the University or the Government Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of this subparagraph (a)(4), provided that no agreement may be made under this provision that will increase costs paid by the University or the Government.

(iii) When the University or the Government Contracting Officer and the Seller agree to a change to a cost accounting practice, other than a change under subparagraph (4)(i) above, negotiate an equitable adjustment as provided in the Changes article of the order.

(5) Agree to an adjustment of the order price or cost allowance, as appropriate, if the Seller or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the University or the Government. Such adjustment shall provide for recovery of the increased costs to the University or the Government together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P.L. 92-41, 85 Stat. 97, from the time the payment by the University or the Government was made to the time the adjustment is effected.

(b) If the Government Contracting Officer, the University, and the Seller fail to agree whether the Seller or a subcontractor has complied with an applicable CAS in FAR Subpart 30.4 or a CAS rule or regulation in FAR Subpart 30.3 and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes article of the order.

(c) The Seller shall permit any authorized representatives of the University or the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this article.

(d) The Seller shall include in all negotiated subcontracts that the Seller enters into the substance of this article, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts exceeding \$100,000 in which the price negotiated is not based on:

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation.

The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS article as specified in FAR 30.201-1.

Note (1): New or modified CAS shall apply to both national defense and nondefense CAS-covered orders upon award of a new national defense CAS-covered order containing the new or modified Standard. The award of a new nondefense CAS-covered order shall not trigger application of new CAS or modification to CAS.

Note (2): Subcontractors shall be required to submit their Disclosure Statements to the Seller. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Contracting Officer, it may satisfy this requirement by certifying to the Seller the date of the Statement and the address of the Government Contracting Officer.

Note (3): In any case in which a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Seller or higher-tier subcontractor, the Seller may authorize direct submission of that subcontractor's Disclosure Statement to the University or the same Government offices to which the Seller was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Seller of liability as provided in subparagraph (a)(5) of this article. In view of the foregoing and since the order may be subject to adjustment under this article by reason of any failure to comply with rules, regulations, and Standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the Seller may wish to include an article in each such subcontract requiring the subcontractor to appropriately indemnify the Seller. However, the inclusion of such an article and the terms thereof are matters for negotiation and agreement between the Seller and the subcontractor, provided that they do not conflict with the duties of the Seller under its order with the University. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the subcontractor is a business unit that, pursuant to FAR 30.201-2(b) is entitled to elect modified order coverage and to follow FAR 30.401 and 30.402, the Disclosure and Consistency of Cost Accounting Practices article shall be inserted in lieu of this article.

Note (5): The terms defined in FAR 30.301 and 31.001 shall have the same meanings herein. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Seller or subcontractor after receiving quotations from at least two persons not associated with each other or with such Seller or subcontractor, provided that (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

Article F6 - Disclosure and Consistency of Cost Accounting Practices

(a) The Seller, in connection with the order, shall

- (1) Comply with the requirements of FAR 30.401, Consistency in Estimating, Accumulating, and Reporting Costs and 407, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of the order as indicated in FAR Subpart 30.4
- (2) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by FAR 30.202-1 through 30.202-5. If the Seller has notified the Government Contracting Officer or the University that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the University or the Government.

Note (1): Subcontractors shall be required to submit their Disclosure Statements to the Seller. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Contracting Officer, it may satisfy that requirement by certifying to the Seller the date of the Statement and the address of the Government Contracting Officer.

Note (2): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Seller or higher-tier subcontractor, the Seller may authorize direct submission of the subcontractor's Disclosure Statement to the University or the same Government offices to which the Seller was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Seller of liability if it or a subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and if such failure results in any increased costs paid by the University or the Government. In view of the foregoing and since the order may be subject to adjustment under this article by reason of any failure to comply with rules, regulations, and Standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the Seller may wish to include an article in each such subcontract requiring the subcontractor to appropriately indemnify the Seller. However, the inclusion of such an article and the terms thereof are matters for negotiation and agreement between the Seller and subcontractor, provided that they do not conflict with the duties of the Seller under its order with the University. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (3): The terms defined in FAR Subpart 30.3 and FAR 31.001 shall have the same meanings in this article. As there defined, negotiated subcontract means any subcontract except a firm-fixed-price subcontract made by a Seller or subcontractor after receiving quotations from at least two persons not associated with each other or such Seller or subcontractor, provided that (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

- (3)(i) Follow consistently the Seller's cost accounting practices. A change to such practices may be proposed, however, by the University, the Government Contracting Officer, or the Seller, and the Seller agrees to negotiate with the University or the Government Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to the order, and the Disclosure Statement, if affected, must be amended accordingly.
- (ii) The Seller shall, when the University or the Government Contracting Officer and the Seller agree to a change to a cost accounting practice and the University or the Government Contracting Officer has made the finding that the change is desirable and not detrimental to the interests of the University or the Government, negotiate an

equitable adjustment as provided in the Changes article of the order. In the absence of the required finding, no agreement may be made under this article that will increase costs paid by the University or the Government.

- (4) Agree to an adjustment of the order price or cost allowance, as appropriate, if the Seller or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the University or the Government. Such adjustment shall provide for recovery of the increased costs to the University or the Government together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P. L. 92-41, 85 Stat. 97, from the time the payment by the University or the Government was made to the time the adjustment is effected.
- (b) If the University, the Government Contracting Officer, and the Seller fail to agree whether the Seller has complied with an applicable CAS, rule, or regulation as specified in FAR Subparts 30.3 and 30.4 and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute within the meaning of the Disputes article of the order.
- (c) The Seller shall permit any authorized representatives of the Government or the University to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this article.
- (d) The Seller shall include in all negotiated subcontracts that the Seller enters into the substance of this article, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that
 - (1) If the subcontract is awarded to a business unit that pursuant to FAR 30.201 is required to follow all CAS, the Cost Accounting Standards article shall be inserted in lieu of this article; or
 - (2) This requirement shall apply only to negotiated subcontracts exceeding \$100,000 where the price negotiated is not based on
 - (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (ii) Prices set by law or regulation
- (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS article as specified in FAR 30.201-1.

Article F7 - Administration of Cost Accounting Standards

For the purpose of administering the Cost Accounting Standards (CAS) requirements under the order, the Seller shall take the steps outlined in paragraphs (a) through (f) below:

- (a) Submit to the University or the Government Contracting Officer a description of any accounting change, the potential impact of the change on orders containing a CAS article, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change that displays the potential shift of costs between CAS-covered orders by contract type (e.g., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other Seller business activity. As related to CAS-covered orders, the analysis should display the potential impact of funds of the various Agencies/Departments (e.g., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
 - (1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraphs (a)(3) and (a)(4)(i) of the CAS article, within 60 days (or such other date as may be mutually agreed to) after award of an order requiring this change.
 - (2) For any change in cost accounting practices proposed in accordance with subparagraph (a)(4)(ii) or (a)(4)(iii) of the Cost Accounting Standards article or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices article not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
 - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the Cost Accounting Standards article or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices article within 60 days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Seller.
- (b) Submit a cost impact proposal in the form and manner specified by the University or the Government Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) above. If the above proposal is not submitted within the specified time, or an extension granted by the University or Government Contracting Officer, an amount not to exceed ten percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the University or the Government Contracting Officer.
- (c) Agree to appropriate order and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the Cost Accounting Standards article or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices article.
- (d) For all subcontracts subject either to the Cost Accounting Standards article or to the Disclosure and Consistency of Cost Accounting Practices article

- (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting articles shall not be used), and
- (2) Include the substance of this article in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Seller's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:
 - (i) Subcontractor's name and subcontract number;
 - (ii) Dollar amount and date of award;
 - (iii) Name of the Seller making the award; and
 - (iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards article or the Disclosure and Consistency of Cost Accounting Practices article, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.
- (e) Notify the University in writing of any adjustments required to subcontracts under the order and agree to an adjustment based on them to the Seller's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher-tier subcontract or the order appropriately.
- (f) For subcontracts containing the Cost Accounting Standards article, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

Article F8 - Price Reduction for Defective Cost or Pricing Data

- (a) If any price, including profit or fee negotiated in connection with the order or any cost reimbursable under the order, was increased by any significant amount because (1) the Seller or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Seller cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly, and the order shall be modified to reflect the reduction.
- (b) Any reduction in the order price under paragraph (a) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller, provided that the actual subcontract price was not itself affected by defective cost or pricing data.

Article F9 - Service Contract Act of 1965 (For Orders \$2500 or Less)

Except to the extent that an exemption, variation, or tolerance would apply under 29 CFR Part 4.6 if the order exceeded \$2500, the Seller and any subcontractor shall pay all employees working on the order not less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in the order.

Article F10 - Service Contract Act of 1965 (For Orders Exceeding \$2500)

- (a) **Definitions.** "Act" as used in this article means the Service Contract Act of 1965, as amended (41 U.S.C. 351-358).

"Seller" as used in this article means the Seller or any subcontractor at any tier.

"Service employee" as used in this article means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a University order not exempted under 41 U.S.C. 356, the principal purpose of which is to furnish services in the United States, as defined in Section 22.1001 of the FAR. The definition includes all such persons regardless of the actual or alleged contractual relationship between them and a seller.

- (b) **Applicability.** To the extent that the Act applies, the order is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in the order by reference. This article does not apply to orders or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356 as interpreted in Subpart C of 29 CFR 4.
- (c) **Compensation.**

- (1) The Seller shall pay not less than the minimum wage and shall furnish fringe benefits to each service employee under the order in accordance with the wages and benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any attachment to the order.

- (2) If there is an attachment, the Seller shall classify any class of service employees not listed in it but to be employed under the order. The classification shall provide a reasonable relationship to those listed in the attachment. The Seller shall pay those class wages and fringe benefits determined by agreement of the interested parties: the University, the Seller, and the employees who will perform the order or their representatives. If the interested parties do not agree, the University shall submit the question with a recommendation for final determination by the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by ESA is a violation of the order.

- (3) If the term of the order is more than one year, the minimum wages and fringe benefits required for service employees under the order shall be subject to adjustment after one year and not less often than once every two years under wage determinations issued by ESA.

- (4) The Seller can discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) above by furnishing any equivalent combinations of bona fide fringe benefits or by making equivalent or differential cash payments in accordance with Subparts B and C of 29 CFR 4.

- (d) **Minimum Wage.** In the absence of a minimum wage attachment for the order, the Seller shall not pay any service or other employees performing the order less than the minimum wage specified by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206). Nothing in this article shall relieve the Seller of any other legal or contractual obligation to pay a higher wage to any employee.

- (e) **Successor Orders.** If the order succeeds an order subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to the order, the Seller may not pay any service employee performing the order less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Seller or subcontractor may be relieved of this obligation unless the limitations of 29 CFR 4.1(c) apply or unless the Secretary of Labor or the Secretary's authorized representative

- (1) Determines that the agreement under the predecessor order was not the result of arm's-length negotiations; or
- (2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality.

- (f) **Notification to Employees.** The Seller shall notify each service employee commencing work on the order of the minimum wage and any fringe benefits required to be paid or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such posters that may be provided by the Department of Labor.

- (g) **Safe and Sanitary Working Conditions.** The Seller shall not permit services called for by the order to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Seller that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Seller shall comply with the safety and health standards applied under 29 CFR Part 1925.

- (h) **Records.** The Seller shall maintain for three years from the completion of the work and shall make available for inspection and transcription by the University or authorized ESA representatives a record of the following:

- (1) For each employee subject to the Act
 - (i) Name and address;
 - (ii) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments made instead of fringe benefits, and total daily and weekly compensation;
 - (iii) Daily and weekly hours worked; and
 - (iv) Any deduction, rebates, or refunds from total daily or weekly compensation;

- (2) For those classes of service employees not included in any wage determination attached to the order, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c) of this article. A copy of the report required by paragraph (k) of this article will fulfill this requirement.

- (i) **Withholding of Payments and Termination of Order.** The University shall withhold from the Seller under any order with the Seller any sums the University or an appropriate officer of the Labor Department decides may be necessary to pay underpaid employees. Also, any failure to comply with the requirements of this article may be grounds for termination for default.

- (j) **Subcontracts.** The Seller agrees to insert this article in all subcontracts issued under the order.

- (k) **Seller's Report.**

- (1) If a wage determination is attached to the order and any classes of service employees not listed on it are to be employed under the order, the Seller shall report promptly to the University the wages to be paid and the fringe benefits to be provided each of these classes when determined under paragraph (c) of this article.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the order are covered in a collective bargaining agreement effective at any time when the order is being performed, the Seller shall provide to the University a copy of the agreement and full information on the application and accrual of wages and benefits, including any prospective increases to service employees working on the order. The Seller shall report when performance of the order begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(g) **Variations, Tolerances, and Exemptions Involving Employment.** Notwithstanding any of the provisions in paragraphs (c) through (k) of this article, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor:

(1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (19 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or payments made instead of these benefits required under Section 2(a)(2) of the Act.

(ii) The Administrator will issue certificates under the Act for employing apprentices, student learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938 or subject to different minimum rates of pay under the two acts and shall authorize appropriate rates of minimum wages but without changing requirements concerning fringe benefits or supplementary cash payments made instead of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by Section 2(a)(1) or Section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 521. However, the amount of credit shall not exceed 40 per cent of the minimum rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

Article F11 - Hazardous Material Identification and Material Safety Data

(a) As prescribed in Federal Standard No. 313A, the Seller agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20) for all hazardous material with delivery of the hazardous material, whether or not listed in Appendix A of the Standard. This obligation applies to all goods delivered under the order that will involve exposure to hazardous materials or items containing these materials.

(b) "Hazardous material" as used in this article, is as defined in Federal Standard No. 313A.

(c) Neither the requirements of this article nor any act or failure to act by the University shall relieve the Seller of any responsibility or liability for the safety of University, Seller, subcontractor, or other personnel or property.

(d) The Seller shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(e) The University's rights in data furnished under the order with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the University for these purposes.

(2) To use, duplicate, and disclose data furnished under this article, in accordance with subparagraph (e)(1) above, in precedence over any other article of the order providing for rights in data.

(3) That the University is not precluded from using in any manner similar or identical data acquired from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside the University or the Government, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this article applies:

"These data are furnished under University of California, Los Alamos National Laboratory Purchase Order No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the University. This legend shall be marked on any reproduction of this data."

(5) That the Seller shall not place the legend or any other restrictive legend on any data that the Seller or any subcontractor previously delivered to the University without limitations.

(f) The Seller shall insert this article, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or orders) under the order involving hazardous materials.

Article F12 - Preference for Privately Owned U.S.-Flag Commercial Vessels

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241) (b) requires that Federal departments and agencies transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of goods that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any goods that are located within or outside the United States and that may be transported by ocean vessel are:

(1) Acquired for a U.S. Government agency account;

(2) Furnished to or for the account of any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

(b) The Seller shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under the order (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any goods under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Seller shall submit one legible copy of a rated onboard ocean bill of lading for each shipment to both (i) the University and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Seller.

(2) The Seller shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) Except for small purchases as described in 48 CFR 13, the Seller shall insert the substance of this article, including this paragraph (d), in all subcontracts under the order.

(e) The requirement in paragraph (a) does not apply to

(1) Small purchases as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of goods purchased with foreign currencies made available or derived from funds that are made available under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified goods when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, phone (202) 426-4610.

Article F13 - Classification

In the performance of the work under the order, the Seller shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and equipment originated or generated under the order in accordance with classification regulations and guidance furnished to the Seller by the University. Every subcontract issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract, the subcontractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor by the Seller.

Article F14 - Security Authorization

All Seller personnel engaged in the performance of work under the order on University or Government premises must possess DOE Q type access authorizations. It shall be the Seller's responsibility to obtain necessary application forms in advance of need for authorized access. Approximately one year is normally required for granting Q type access authorizations after the

properly completed application forms are submitted. Properly completed application forms for Q type access authorizations shall be submitted by the Seller for its employees to the University. All personnel will be briefed on access to classified materials and/or security areas. In the performance of the work, the Seller shall be responsible for safeguarding information as may come into the Seller's possession or within the purview of its work. Unless otherwise authorized by the University in writing, upon completion or termination of the order, the Seller shall return all classified material and badges in the possession of the Seller or any person under the Seller's control and shall furnish Security Termination Statements (Form DOE-1361) to the University for all personnel.

Article F15 - Price Reduction For Defective Cost or Pricing Data—Modifications

- (a) This article shall become operative only for any modification to the order involving a pricing adjustment expected to exceed \$100,000, except that this article does not apply to any modification for which the price is
 - (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (b) If any price, including profit or fee, negotiated concerning any modification under this article or any cost reimbursable under the order was increased by any significant amount because (1) the Seller or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a subcontractor or prospective subcontractor furnished the Seller cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly, and the order shall be modified to reflect the reduction. This right to a price reduction is limited to that reduction resulting from defects in data relating to modifications for which this article becomes operative under paragraph (a) above.
- (c) Any reduction in the order price under paragraph (b) above because of defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller, provided that the actual subcontract price was not itself affected by defective cost or pricing data.

Article F16 - Subcontractor Cost or Pricing Data—Modifications

- (a) The requirements of paragraphs (b) and (c) of this article shall become operative only for any modification to the order involving a pricing adjustment expected to exceed \$100,000 and shall be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed \$100,000 when entered into or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Seller shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is
 - (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (c) The Seller shall require the subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Seller shall insert the substance of this article, including this paragraph (d), in each subcontract that exceeds \$100,000 when entered into.

Article F17 - Labor Surplus Area Subcontracting Program

- (a) See the Utilization of Labor Surplus Area Concerns article for applicable definitions.
- (b) The Seller agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the order at prices no higher than obtainable elsewhere. The Seller shall
 - (1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns article, and (iii) administer the Seller's labor surplus area subcontracting program;
 - (2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;
 - (3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of quotations, quantities, specifications, and delivery schedules to facilitate the participation of LSA concerns.

- (4) Include the Utilization of Labor Surplus Area Concerns article in subcontracts that offer substantial LSA subcontracting opportunities; and
 - (5) Maintain records showing (i) the procedures adopted and (ii) the Seller's performance to comply with this article. The records will be kept available for review by the Government until the expiration of one year after the award of the order, or for such longer period as may be required by any other article of the order or by applicable law or regulations.
- (c) The Seller further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns article terms that conform substantially to the language of this article, including this paragraph (c), and to notify the University of the names of subcontractors.

Article F18 - Small Business and Small Disadvantaged Business Subcontracting Plan

- (a) This article does not apply to small business concerns.
 - (b) "Commercial product" as used in this article means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product that, in the opinion of the University, differs only insignificantly from the Seller's commercial product.
- "Purchase order" as used in this article means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for goods or services required to perform the contract or subcontract.
- (c) Upon request by the University, the Seller shall submit and negotiate a subcontracting plan, where applicable, that addresses separately subcontracting with small business concerns and small disadvantaged business concerns and that shall be included in and made a part of the resultant purchase order. The subcontracting plan shall be negotiated within the time specified by the University. Failure to submit and negotiate the subcontracting plan shall make the Seller ineligible for award of a purchase order.
 - (d) The Seller's subcontracting plan shall include the following:
 - (1) Expressed in terms of percentages of total planned subcontracting dollars, goals for the use of small business concerns and small disadvantaged business concerns as subcontractors. The Seller shall include all subcontracts that contribute to purchase order performance and may include a proportionate share of goods and services that are normally allocated as indirect costs.
 - (2) A statement of
 - (i) Total dollars planned to be subcontracted;
 - (ii) Total dollars planned to be subcontracted to small business concerns; and
 - (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.
 - (3) A description of the principal types of goods and services to be subcontracted and an identification of the types planned for subcontracting to small business concerns and to small disadvantaged business concerns.
 - (4) A description of the method used to develop the subcontracting goals in (1) above.
 - (5) A description of the method used to identify potential sources of solicitations (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).
 - (6) A statement about whether the Seller included indirect costs in establishing subcontracting goals and description of the method used to determine the proportionate share of indirect costs to be incurred with small business concerns and with small disadvantaged business concerns.
 - (7) The name of the person employed by the Seller who will administer the Seller's subcontracting program and a description of the duties of that person.
 - (8) A description of the efforts the Seller will make to ensure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.
 - (9) Assurances that the Seller will include the Utilization of Small Business Concerns and Small Disadvantaged Business Concerns article in all subcontracts that offer further subcontracting opportunities and that the Seller will require all subcontractors (except small business concerns) who receive subcontracts exceeding \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the Seller.
 - (10) Assurances that the Seller will
 - (i) Cooperate in any studies or surveys that may be required by the University;
 - (ii) Submit periodic reports to allow the University or the Government to determine the extent of compliance by the Seller with the subcontracting plan;

- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts (SF 295 is not required) in accordance with instructions on the form, except that the form shall be submitted quarterly on or before the 15th of January, April, July, and October and upon purchase order completion, and except that the report shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of the purchase order; and
- (iv) Ensure that its subcontractors agree to submit Standard Form 294 in accordance with the instructions in paragraph (1)(i)(iii) above.
- (11) A recitation of the types of records, including establishing source lists, the Seller will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan and a description of its efforts to locate small and disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a facility-wide or company-wide basis):
 - (i) Source lists, guides, and other data that identify small and small disadvantaged business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, and indicating (A) whether small business concerns were solicited and if not, why not; (B) whether small disadvantaged business concerns were solicited and if not, why not; and (C) if applicable, the reason award was not made to a small business concern.
 - (iv) Records of any outreach efforts to contact trade associations, business development organizations, and conferences and trade fairs to locate small and small disadvantaged business sources.
 - (v) On a subcontract-by-subcontract basis, records to support award data submitted by the Seller to the University or the Government, including the name, address, and business size of each subcontractor. Sellers having company or division-wide annual plans need not comply with this requirement.
- (c) To effectively implement this plan to the extent consistent with efficient purchase order performance, the Seller shall do the following:
 - (1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules to facilitate the participation by such concerns. When the Seller's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all make-or-buy decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.
- (f) A master subcontracting plan on a facility-wide or division-wide basis that contains all the elements, except goals, required by (d) above may be incorporated by reference as a part of the subcontracting plan required of the Seller by this article, provided that (1) the master plan has been approved, (2) the Seller provides copies of the approved master plan and evidence of its approval to the University, and (3) goals and any deviations from the master plan deemed necessary by the University to satisfy the requirements of the purchase order set forth in the individual subcontracting plan.
- (g) (1) If a commercial product is offered, the subcontracting plan required by this article may relate to the Seller's production generally for both commercial and noncommercial products rather than solely to the purchase order. In these cases, and with the concurrence of the Government, the Seller shall submit one company-wide or division-wide annual plan.
 - (2) The annual plan shall be reviewed for approval by the Federal agency awarding the Seller its first prime contract requiring a subcontracting plan during the fiscal year or by an agency satisfactory to the University.
 - (3) The approved plan shall remain in effect during the Seller's fiscal year for all of the Seller's commercial products.
- (h) Prior compliance of the Seller with other such subcontracting plans under previous purchase orders will be considered by the University in determining the responsibility of the Seller for award of the purchase order.
- (i) The failure of the Seller or subcontractor to comply in good faith with (1) the Utilization of Small Business Concerns and Small Disadvantaged Business Concerns article, or (2) an approved plan required by this article shall be a material breach of the purchase order.